

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

**Investigation into Petition Filed by Vermont Department )  
of Public Service Re: Energy Efficiency Utility Structure )**

**Docket No. 7466**

**TESTIMONY OF WILLIAM DRISCOLL ON BEHALF OF  
ASSOCIATED INDUSTRIES OF VERMONT**

**June 26, 2009**

**SUMMARY OF TESTIMONY**

This testimony sets forth Associated Industries of Vermont's (AIV's) position on several key issues identified in the petition of the Vermont Department of Public Service opening this docket. The issues addressed include whether to change the current contract model to an appointment model in any change in the EEU structure, the length of any possible appointment, transition issues, performance indicators, an EEU Advisory Committee, alternative funding mechanisms to the Energy Efficiency Charge, and public information about EEU-supported projects.

**TESTIMONY OF WILLIAM DRISCOLL**

**Introduction**

Q. What is your name, position at Associated Industries of Vermont (AIV), and business address?

A. My name is William Driscoll, and I am Vice President of AIV, located at 99 State Street in Montpelier, Vermont 05602.

Q. What is the purpose of your testimony?

A. I will provide AIV's assessment of and position on certain key outstanding issues and questions in this docket. AIV is a business association with a core membership drawn from Vermont's manufacturing sector, although we also represent businesses from several other economic sectors. The cost of electricity, and of doing business generally, is of central concern to us and our members. Appropriately structured and overseen energy efficiency programs are therefore of great importance, both in terms of the cost effectiveness of the programs specifically and the overall impact of supporting such programs on the cost of doing business generally.

**Question of Abandoning the Current Contract Model**

Q. What is AIV's position on the question of changing the current contract model for the Energy Efficiency Utility (EEU) structure in favor of an appointment model?

1     A.     AIV prefers retaining the current contract model. We believe that the terms of the  
2           current contract model can be improved to enhance accountability and cost  
3           effectiveness, but that, fundamentally, competitively bidding out the EEU contract or  
4           contracts every three years best serves the interests of Vermont ratepayers.

5  
6     Q.     What is AIV's general assessment of key arguments raised in favor of changing from  
7           the current contract model to an appointment model?

8  
9     A.     Generally, the arguments are not persuasive. They appear to fall into two basic  
10           categories -- those related to the length of the current contract cycle, which are also  
11           relevant to the length of a possible appointment cycle should the structural model be  
12           changed, and those related to the nature of a contract per se, including implications  
13           of an EEU's relationship to the Public Service Board (Board). I will address the  
14           arguments related to the length of the contract cycle, specifically those related to the  
15           Forward Capacity Market, the number of potential competitors, long term planning,  
16           quality of employees, and overall cost, when I discuss the appropriate length of an  
17           appointment should an appointment model be adopted.

18  
19           With regard to arguments stemming from the contractual nature of the relationship  
20           between an EEU and the Board, it is unclear how the concerns raised call for  
21           abandoning the contract model.

22  
23           It has been suggested that the growing complexity of EEU programs and services  
24           might require changing to an appointment model. But I don't believe any evidence  
25           or specific argument has been put forward as to how complex programs are more  
26           easily overseen and regulated under an appointment as opposed to a contract.

1  
2       It has been noted that the potential for conflicts between the judicial and  
3       administrative roles of the Board in matters involving the EEU has required particular  
4       efforts to avoid ex parte communications, limitations on party interventions by the  
5       EEU in Board dockets, and other measures. But I don't believe any evidence or  
6       specific argument has been put forward as to how this has prevented the Efficiency  
7       Vermont program from fulfilling its purpose and achieving its goals, or how any  
8       docket or other proceeding before the Board has been meaningfully -- or at all --  
9       compromised.

10  
11       Finally, it has been noted that this relationship has also led to restrictions on the  
12       EEU providing policy advice to or lobbying other entities. But having been very  
13       active in energy and efficiency debates before the Legislature and the Board, I have  
14       never seen any lack of advice or lobbying from all perspectives, including those  
15       presumably shared by the EEU and its contractors.

16  
17       In the absence of any compelling argument for change, including the arguments I  
18       just reviewed, there would appear to be no reason to abandon the current contract  
19       model.

20  
21                   **Key Issues Regarding a Possible Appointment Model**

22  
23   Q.       If an appointment model were to be adopted in a restructuring of the EEU program,  
24       what is AIV's position on the length of appointment and related matters?

1     A.     If an appointment model were to be adopted, AIV prefers three years as an optimal  
2           term, with a presumptive competitive bidding process for each term and proactive  
3           review of efficiency programs and policies in other jurisdictions to help ensure that  
4           Vermont has the most effective and affordable programs and policies here,  
5           regardless of whether the appointees or contractors change from cycle to cycle.

6  
7           Meaningful competition for providing efficiency services is critical. Such  
8           competition helps to ensure cost effectiveness and opportunities for innovation and  
9           fresh approaches to both services and administration of programs.

10  
11          Extending the current three year term, be it for the current contract model or a new  
12          appointment model, raises concerns about the potential for complacency on the part  
13          of both the appointees and regulators, about adequate incentives for strong  
14          performance and continuous improvement, about the appropriate level of financial  
15          risk for underperformance, and about benefiting from the opportunities for  
16          competition in a rapidly evolving field. I am not aware of such longer term contracts  
17          being prevalent in the private sector, presumably for the same reasons. Indeed, I  
18          would speculate that most private sector contracts for services analogous to what  
19          an EEU provides are as short as or shorter than three years.

20  
21          I would also suggest that, given how politicized debates over Efficiency Vermont and  
22          efficiency programs and policies generally have sometimes appeared in Vermont, it  
23          would be best to have as strong a presumption for competitive solicitation of bids as  
24          is reasonable built into the underlying structure. This would not only avoid  
25          complacency on the part of either an appointee or contractor on the one hand or  
26          regulators on the other, it would also help avoid any possible perception that any

1 relationship between a given appointee or contractor and regulators or other  
2 authorities might influence a decision not to solicit bids for a reappointment or new  
3 contract.

4  
5 Finally, AIV believes that an overarching goal of EEU activities should be market  
6 transformation and related changes in behavior, practices, and market products and  
7 services such that many, and perhaps eventually all, EEU services are no longer  
8 necessary. The longer a term of appointment, the more difficult this result would be  
9 should the need for services end before such a term.

10  
11 Q. What is AIV's general assessment of key arguments raised in favor of extending a  
12 possible term of appointment beyond three years?

13  
14 A. Generally, the arguments are not persuasive. They either appear to be largely  
15 baseless, or do not outweigh the benefits of more frequent competition I just  
16 outlined.

17  
18 It has been suggested that participation in the Forward Capacity Market requires  
19 longer terms. But this would not appear to be the case. Not only has Efficiency  
20 Vermont already participated successfully in the Forward Capacity Market under the  
21 current structure, but any concerns about long term continuity and commitments can  
22 readily be addressed in the terms of competition for future appointments or  
23 contracts. Moreover, it should be noted that participation in the Forward Capacity  
24 Market is not an essential activity of an EEU, and it would be inappropriate to change  
25 fundamentally the EEU structure just to accommodate such participation even if it

1        was necessary, particularly if the benefits of competition and other positive  
2        attributes are compromised.

3  
4        It has been suggested that, because there has been little participation in past rounds  
5        of competition under the current contract structure, less frequent competition is  
6        called for or that open bidding should be abandoned entirely. But this ignores the  
7        value of competitive discipline that comes simply from the fact that a current  
8        appointee or contractor will be exposed to competition regardless of how many  
9        competitors eventually come forward when the time comes. It also ignores the fact  
10       that energy efficiency is a rapidly growing and maturing field, and that there is every  
11       reason to expect that there will be greater competition from various entities going  
12       forward. Indeed, establishing a structure that has credible and frequent  
13       opportunities for competition should encourage greater interest and participation  
14       from entities both from Vermont and from other jurisdictions.

15  
16       It has been suggested that effective long term planning requires longer terms. But  
17       long term planning is often done by government and private sector entities that do  
18       not enjoy long term job security or certainty. Again, contract or appointment  
19       requirements can ensure both long term planning and continuity of follow through.

20  
21       It has been suggested that longer terms are needed for an EEU to attract and retain  
22       qualified personnel. This is an especially odd argument, given that most regulatory  
23       entities and many contract-based private sector businesses face cycles of job  
24       security that are near to or even less than three years. It also suggests that the  
25       current employees of Efficiency Vermont, recruited under the current structure, are

1           therefore likely to be sub-par, and I would be very interested to see if any of the  
2           parties to this docket would make that argument.

3  
4           Finally, it has been suggested that the current three-year bidding cycle is too  
5           expensive, and that an appointment model should have longer cycles or less  
6           stringent presumptions for competitive bids. However, the actual cost of bidding on  
7           a three year cycle has not been discussed in any real detail, and I do not recall any  
8           attempt being made by those who would make this argument to explicitly balance  
9           what costs there are against the values gained by competition. AIV believes that a  
10          three year competitive cycle for an appointment or contract can be conducted such  
11          that the values gained are worth the costs involved.

12  
13   Q.     What is AIV's position on how a transitional process should address initial  
14          appointments should an appointment model be adopted?

15  
16   A.     Should an appointment model be adopted, there should be a proactive review of  
17          efficiency programs and policies in other jurisdictions and a full competitive bidding  
18          process for initial appointments. Potential competitors should be made aware of and  
19          have an opportunity to make their case to compete for the contract or initial  
20          appointment.

21  
22          This would help ensure that the terms of an appointment and any possible  
23          appointees will best meet the needs of Vermont ratepayers. It would seem illogical  
24          that the standards of appointing an initial appointee should be any less than the  
25          standards for future reappointments or new appointments. Moreover, to the extent  
26          that the EEU structure might be changed significantly, it would not be prudent or



1 responsible to simply appoint contractors from the current model without considering  
2 alternatives in a meaningful way.

3  
4 Q. What is AIV's position on explicitly including administrative efficiency and similar cost  
5 effectiveness standards among performance indicators?

6  
7 A. A more explicit focus on the efficiency and cost-effectiveness of any EEU is called  
8 for. This should be addressed explicitly within the Qualitative Performance Indicators  
9 that have been under discussion or any similar standards and requirements that  
10 might be ultimately adopted. Moreover, continuous improvement in administrative  
11 efficiency should be a requirement.

12  
13 The transparency of and accountability for administrative costs have been long  
14 standing concerns about Efficiency Vermont for AIV. As a publicly funded and  
15 expensive program, it is critical that both regulators and the public have access to  
16 meaningful and understandable information on all expenses. Not only must  
17 regulators be able to have the information necessary for responsible oversight, but  
18 the public must have the information necessary to have faith in both the  
19 possible appointees or contractors and the overseers.

20  
21 There should also be clear criteria available upon which to judge how well EEU  
22 programs are being administered -- it is one thing to have a clear understanding of  
23 what the administrative costs are, but another to be able to judge whether they are  
24 reasonable. For example, there are administrative cost standards for rating  
25 charitable organizations. Presumably there are existing independent standards and  
26 guidelines that would play an appropriate role in assessing the performance of EEU

1 appointees or contractors. If there are not, then such standards should be  
2 developed.

3  
4 Q. What is AIV's position on the role and make up of an EEU Advisory Committee?

5  
6 A. AIV believes than an EEU Advisory Committee could serve a useful function in  
7 providing independent assessment of and advice on EEU programs and services, but  
8 only if the members and leadership are appointed independently of any EEU. AIV  
9 would prefer that such appointments be made by the Board. If such appointments  
10 are made by an EEU, there would appear to be no value in having such a Committee  
11 included in any new EEU structure.

12  
13 Q. What is AIV's position on addressing alternative funding mechanisms should the  
14 Energy Efficiency Charge (EEC) be addressed in a new EEU structure?

15  
16 A. The cost of the Energy Efficiency Charge can significantly reduce or even  
17 eliminate the systemic savings benefits of Efficiency Vermont, particularly to non-  
18 participating ratepayers. Any restructuring efforts should include a clear directive for  
19 regulators and stakeholders to work on developing alternative financing approaches  
20 to offset reliance on the EEC in whole or in part, thereby maintaining funding for  
21 appropriate programs while minimizing negative economic impacts.

22  
23 Q. What is AIV's position on making information related to specific EEU-supported  
24 projects public?

25

1     A.     Publicly available annual or running reports on the number, nature, cost, value, and  
2           contact information for commercial and industrial projects supported by Efficiency  
3           Vermont should be required, consistent with reasonable protection of competitively-  
4           sensitive information. Sharing this information more broadly has the potential to  
5           improve EEU efficiency and effectiveness by replicating successful projects more  
6           quickly with less demand on the EEU budget.

7

8     Q.     Does this conclude your testimony?

9

10    A.     Yes, at this time.